



THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: April 7, 2005 REPORT NO. 05-091

ATTENTION: Public Safety & Neighborhood Services Committee
Agenda of April 13, 2005

SUBJECT: Proposed Police Permit for Tobacco Sales in San Diego

REFERENCE: Companion City Attorney Report

SUMMARY

Issue – Should the City Council adopt an ordinance to amend the San Diego Municipal Code to require a police permit to operate as a tobacco retailer in the City of San Diego, direct that the permit be administered as part of the Business Tax Certificate process, direct the San Diego Police Department (SDPD) to enforce it as situations warrant and time and resources permit, and impose a \$30 fee upon tobacco retailers to fund the associated permit administration and administrative hearing costs?

Manager's Recommendation – Adopt an ordinance to amend the San Diego Municipal Code to require a police permit to operate as a tobacco retailer in the City of San Diego, direct that the permit be administered as part of the Business Tax Certificate process, direct the San Diego Police Department (SDPD) to enforce it as situations warrant and time and resources permit, and impose a \$30 fee upon tobacco retailers to fund the associated permit administration and administrative hearing costs.

Other Recommendations – The stakeholder group consisting of health advocates and business representatives specifically recommended dedicating staff to enforcement and funding costs associated with the ordinance through tobacco Master Settlement Agreement (MSA) funds the City receives annually.

Fiscal Impact – There are three components to implementing the proposed ordinance including permit administration, enforcing the law, and conducting administrative hearings in the case of violations. If the proposed tobacco ordinance is approved, costs would be associated with the permit administration and administrative hearing components. The enforcement as proposed would be folded into the SDPD's current responsibilities and handled as situations warrant and time and resources permit. The

permit administration can be handled via the existing Business Tax Certificate process with estimated costs of approximately \$20,000. The cost of administrative hearings has been estimated at \$20,000 annually. Given the budget challenges facing the City going into the FY 2006 budget process, it is recommended that a fee be imposed to recover the costs associated with the ordinance. Based upon approximately 1,350 tobacco retailers in the City of San Diego, it is estimated that a fee be \$30 to recover the associated costs. The fee would be evaluated annually for cost recovery.

BACKGROUND

On October 12, 2003, State Assembly Bill 71 was chaptered creating a state licensing program for the sale of tobacco products and permitting local governments to create their own ordinances discouraging violations of tobacco law, specifically as they relate to the sale of tobacco to minors. In response to a request for assistance from the late Councilmember Lewis with support from Dr. Cleo Malone, the San Diego Police Department (SDPD) and City Attorney staff began to draft an ordinance to help address the issue of minors obtaining tobacco products within the City of San Diego. At the June 9, 2004 Public Safety & Neighborhood Services (PS&NS) Committee meeting, staff proposed that an ordinance be developed to create a requirement that all persons who sell tobacco products have a police permit.

In broad terms, an ordinance requiring all persons selling tobacco to obtain a police permit would create a new category of police regulated business. It would require that tobacco retailers have a police permit to operate as such and that they do so from a fixed location. A tobacco retailer is defined as any person who owns or operates a business, for profit or not, that sells, offers to sell or offers to exchange for consideration tobacco or tobacco products. The intent of requiring a permit to sell tobacco is to ensure that persons who are inclined to sell tobacco products to minors are discouraged from doing so and to provide a mechanism to hold those that do sell to minors accountable for their actions. During the June 9th Committee discussion, a draft ordinance was presented as a starting point and the stakeholders on both sides of the issue raised concerns.

The State has attempted to curb the illegal sale of tobacco products to minors, but those in support of a City ordinance, to be referred to generally as “health advocates”, argue that the state laws have been insufficient. Currently, under California Penal Code section 308, one of several state laws in place to regulate tobacco sales, it is illegal to sell tobacco products to minors. The health advocates argue that this current regulation does not adequately address the issue because the progressive fines which could be imposed (ranging from \$250 to \$1,000) are not considered a strong enough deterrent to the illegal activity of selling tobacco to minors. As a result, the proponents argue that local regulation is required.

Business representatives state that sufficient regulatory instruments are already in place. They argue that implementation of a new local ordinance essentially punishes the entire retail industry for the unlawful actions of a limited number of vendors. Representatives of the retail industry are in favor of implementing a system that would directly impose sanctions on the specified violators.

During the Committee discussion in which concerns were expressed from stakeholders on both sides of the issue, staff was directed to follow up on several issues and return to Committee with additional information. The follow up included:

1. Meet with stakeholders to allow for development of an ordinance that takes into account the concerns of the affected parties
2. Determine the number of potential permittees
3. Prepare a cost breakdown for employer costs
4. Draft a grandfather clause and determine a grace period
5. Obtain Lung Association Survey Data
6. Develop a process that is complaint driven to focus on the problems rather than all businesses
7. Provide information on Assembly Bill 3092 and other relevant legislation
8. Indicate why other, existing laws are insufficient
9. Determine and indicate whether there are other ways to fund tobacco enforcement
10. Research the County's role in prohibiting tobacco sales and enforcing existing laws
11. Provide an accounting of the Tobacco Settlement Funds the City receives
12. Address equity issues with regard to charging small stores and large stores the same permit fee
13. ID businesses who sold tobacco products to minors

Some of these issues are addressed in the body of this Manager's Report while the remaining issues are addressed in the companion City Attorney Report.

DISCUSSION

An ordinance has been developed as a proposal to address the issue of minors obtaining tobacco products within the City of San Diego. The proposed ordinance, a copy of which is provided to the Committee as part of the companion City Attorney Report, adds a new division (Division 45) to Chapter 3, Article 3, of the San Diego Municipal Code, Police Regulated Businesses. As a police regulated business, all persons who own or operate a business, for profit or not, which sells tobacco products would be required to possess a police permit. Such persons would be considered tobacco retailers and there are approximately 1,350 within the City of San Diego. It would be a misdemeanor to be a tobacco retailer and operate without a police permit. The proposed ordinance would set criteria to obtain a police permit to operate as a tobacco retailer, set operating requirements, set administrative sanctions for violating tobacco control laws (including suspensions and revocations of police permits), and provide for appeal rights when administrative action is taken.

To develop the language of the ordinance as now proposed, staff met with stakeholders and conducted research to address the issues raised previously by the Committee. Below, each area of Committee direction is addressed specifically.

1. Meet with stakeholders to allow for development of an ordinance that takes into account the concerns of the affected parties:

In response to the Committee's direction, a number of meetings involving "stakeholders" were conducted. Representatives of the retail industry and public health advocates were invited to the meetings to identify issues related to the ordinance, draft solutions to those issues, and document alternatives. Small Business Advisory Board (SBAB) members joined the process in the fall. A list of those who participated is attached to this report as Attachment 1. Coordinated first by the City Attorney's Office and later by the City Manager's staff, these stakeholders met on several occasions to try to come to agreement on a regulatory ordinance. In addition to meetings, e-mail discussions on various topics were also conducted in an effort to ensure all parties had a full and fair opportunity to participate. The goal was to make it an equitable process for all concerned.

When the stakeholder meetings began, the health advocates and business representatives had differing views of many aspects of an ordinance that needed to be addressed to begin to come to agreement on the content. Ultimately, with compromises on both sides, the language of the ordinance was revised to the satisfaction of both groups of stakeholders, and the main focus of the discussions became funding the costs of the ordinance and the enforcement provided. A commitment was made to the stakeholders to convey their positions and alternatives to the various parts of the ordinance. While a summary of the ordinance, funding and enforcement issues are described herein, a more detailed description of the stakeholders process including positions and concerns addressed along the way to reaching consensus is provided in Attachment 2.

The proposed ordinance as drafted assists in discouraging the sale of tobacco products to minors by imposing significant penalties for violating the various tobacco control laws and provides an additional tool for enforcement to combat the sale of tobacco products to minors. Without some level of enforcement, which is described below, there is a greater likelihood that businesses would not be inspected to determine if they are violating tobacco control laws. A sunset clause has been included to provide that the permit requirement expire in five years. During this period, data would be gathered to evaluate the need for such an ordinance and whether it was helpful in curbing tobacco sales to minors. The City could then repeal the sunset clause if it desired to continue the permitting requirement.

While originally anticipated to include a full background check, much discussion ensued regarding the invasiveness of such a check and it was proposed by the City Attorney's Office and SDPD that there be less emphasis on background checks. In lieu of requiring an initial background check for all permit applicants, the ordinance contains the requirement that a permittee has to certify that he or she has not been convicted of or faced administrative action for any license involving the violation of a tobacco control law. Untruthful or misleading certifications would constitute a misdemeanor. However, the right and ability of SDPD to conduct background checks as deemed necessary, including obtaining fingerprints, is included in the ordinance. Such a tool is needed to investigate untruthful or misleading certifications, to investigate complaints of illegal tobacco sales, and to determine the appropriate course of administrative action.

The proposed ordinance gives the Chief of Police the discretion to determine the sanctions to impose if a permittee violates the terms of the permit. Such sanctions range from written warning to suspension to revocation of the permit. The Chief may also negotiate a civil penalty in lieu of

a suspension or revocation. Such discretion permits the Chief to make a case by case determination as to the appropriate level of sanction - thus the Chief could consider aggravating and mitigating factors. However, it is recognized that all parties want some certainty as to the level of discipline. As a result, SDPD will develop a policy which provides general guidelines as to the appropriate administrative action. The following are the proposed guidelines:

First violation of a tobacco control law - a permit may be suspended for a period of up to 60 days.

Second violation of a tobacco control law within 5 years - a permit may be suspended for a period of up to 90 days.

Third violation of a tobacco control law within 5 years - a permit may be suspended for a period of up to 180 days.

Fourth violation of a tobacco control law within 5 years - a permit may be revoked.

In lieu of a suspension or revocation, the Chief of Police may also negotiate a civil penalty, in the amount of \$150 per day of suspension.

It is proposed that the Chief of Police be given the discretion to determine the appropriate level of administrative action to take against a person who violates the conditions of his or her permit as set forth in the proposed ordinance.

Once the language of the ordinance was refined, discussions focused on funding and enforcement levels. An original goal of an ordinance was to generate revenue so that enforcement of the ordinance would be ensured, preferably through the addition of dedicated staff resources from the stakeholders' perspective. While health advocates would support a fee based ordinance with dedicated enforcement, the business representatives have been opposed to any additional fees being imposed upon retailers. Their position is that businesses are already overburdened by taxes and fees, and a fee unfairly punishes those retailers complying with the law.

The costs associated with implementation of an ordinance include permit administration, enforcing the law, and conducting administrative hearings in the case of violations. As the City is facing significant budget challenges going into the FY 2006 budget process, it is not prudent to add new resources to take on additional duties at this time. However, should the policy decision be that implementation of this ordinance is a priority, a manner in which it could be implemented with minimal cost impact has been identified.

Of the three components of the ordinance implementation, the enforcement could be conducted without incurring additional costs. Enforcement could be folded into the SDPD's current responsibilities and handled by existing staff as situations warrant and time and resources permit, as is the case when any new law goes into effect. Enforcement would include conducting minor decoy operations, or stings, to inspect the businesses and following up on complaints. SDPD currently conducts sting operations in regard to enforcing the alcohol laws prohibiting sales to

minors, and those for tobacco could be handled similarly using younger cadets as the minor decoys. Given the limited resources of the SDPD and their unfunded needs, the SDPD has not committed to a specified number of inspections, but having the law on the books would give them the tool to conduct enforcement as other priorities allow. To ensure that the program is run effectively, SDPD would document its activities under the ordinance and report to PS&NS periodically.

If the proposed tobacco ordinance is approved, there would be costs associated with the other two components, the permit administration and administrative hearings. It has been determined that incorporation of permit administration into the existing Business Tax Certificate process would be a cost efficient method of authorizing retailers to sell tobacco. Specifics of this process are still being refined and may require additional review from the City Attorney's office with regard to new procedures. Staff will continue to work to refine the process in anticipation of proceeding to full City Council. It should be clarified that while this report and the ordinance consistently refer to a police permit, administering the authorization to sell tobacco through the existing Business Tax Certificate process would provide for an endorsement for retailers to sell tobacco on the face of the Business Tax Certificate. There would not technically be a separate, paper police permit document provided to the businesses. The endorsement on the face of the Business Tax Certificate would act in that capacity.

If the proposed ordinance is approved, the application form currently used by new businesses to apply for a Business Tax Certificate would be modified to allow a retailer to indicate whether or not tobacco is sold and that the retailer has not violated any tobacco-related laws as specified within the ordinance. Once a new business applicant submits the form indicating their intention to sell tobacco, an addendum would be sent out to request the additional data needed to comply with the ordinance provisions. Estimated costs associated with administering the permit through the Treasurer's Tax Collection System (TTCS) are approximately \$20,000.

Business Tax Certificates are renewed annually. Any existing businesses that sell tobacco would be expected to provide the new tobacco-related information upon the effective date of the ordinance. Letters would be sent to all the existing businesses explaining the new ordinance, and requesting the business owners certify they have not violated any tobacco-related laws and the additional data needed to comply with the ordinance provisions. Upon receipt of this information and payment of the proposed fee, described further below, a business would be issued a new Business Tax Certificate of payment with an endorsement on its face indicating that the business is authorized as a tobacco regulated business.

Once the new certificates are in place, any violations of the tobacco law by a business would result in the SDPD posting a notice of suspension of the authorization to sell tobacco products alongside the Business Tax Certificate. Since the endorsement is on the face of the Business Tax Certificate, which serves dual purposes, the Certificate would not be revoked or taken away from the business. However, the ability to sell tobacco would be impacted in accordance with the penalties as outlined in the provisions of the ordinance and indicated to the public by the visible posting of the notice of suspension.

The other cost associated with the ordinance would be for administrative hearings. An administrative hearing would be an option for a retailer found to be in violation of the law. The number of administrative hearings that would occur annually would depend upon the number of retailers inspected (via minor decoy operations) by SDPD, the number of those found to be in violation of the law, and the number of those that chose to request an administrative hearing rather than just accepting the penalty.

Any retailer found in violation of the law would be entitled to an appeal hearing. The SDPD cannot conduct the appeal hearings because Due Process prohibits the police from both undertaking the enforcement of the ordinance and trying the facts with respect to alleged violations. As a result, the City Manager via his designee is responsible for the appeals process. The Executive Director of the Citizens' Police Review Board is responsible for administering the appeals process. After a notice of appeal is filed, the appeals process begins. The appellant is offered an opportunity to have a hearing before a City hired hearing officer. However, if the appellant objects to the City hired Hearing officer, then the hearing is referred to the State Office of Administrative Hearings so the matter may be heard by a state administrative law judge. The hearing before the State Office of Administrative Hearings follows City Ordinances and Policies related to the conduct of hearings. At the hearings, the SDPD has the burden of proving a violation occurred and that the level of sanction is appropriate. After the hearing officer renders his or her decision there are no further City appeal rights. However, the permittee may file a writ in the Superior Court to contest the hearing officer's decision. The City Attorney's Office responds to the writ and any subsequent Court appellate remedies.

It is difficult to know how many administrative hearings would occur annually, thus it is difficult to pinpoint an exact cost. Associated costs include the hearing officer, a filing fee, and the police officer's time. However, an estimate has been developed based upon the level of stings conducted to enforce alcohol laws. If tobacco stings are conducted at half the rate of alcohol related stings, 43.9% of retailers are found in violation, which is the rate of non-compliance indicated by the Lung Association Survey, and all of those retailers chose to have a hearing, the cost would be approximately \$20k annually. This is a conservative estimate.

Total costs of \$40k are estimated to be associated with implementation of the proposed tobacco ordinance in this minimal cost manner. As indicated above, the health advocates were originally supportive of a fee based ordinance with dedicated enforcement, though the business representatives were not. During stakeholder discussions, the stakeholders came to consensus on recommending that the tobacco Master Settlement Agreement (MSA) funds be utilized to fund the ordinance. At that time, prior to acknowledgement of the fiscal challenges, the focus was on dedicated staffing for enforcement and the group proposed that \$350,000 be reallocated from MSA funds unrelated to the current SDPD allocation to cover enforcement. SDPD has subsequently indicated that full time staffing at that level would be excessive from an operational standpoint even without the fiscal challenges, which further impact that level of resource allocation, hence the recommendation described herein.

In regard to the funding recommended by the stakeholders, the City receives approximately \$10m annually in MSA funds and these funds are committed to various programs in the City per previous Council direction (attachments 3 and 4). Given the City of San Diego's challenging FY

2006 budget outlook, reallocation of tobacco funding to new or enhanced programs such as this ordinance could create additional stress on the General Fund. Given the negative effect reallocating funds would have on the General Fund, a cost recovery fee is recommended to cover permit issuance and administrative hearing costs associated with the ordinance. With approximately 1,350 local retailers selling tobacco, a fee to cover the costs described above would be approximately \$30. The fee is subject to annual review for cost recovery and as the specifics of administration of the tobacco permit through the Business Tax Certificate process are refined, it may be found that the fee could be reduced in the future as the result of initial start up costs. It is proposed that the \$30 be assessed upon the effective date of the ordinance in conjunction with the letter notifying all existing businesses of the new ordinance and requesting the owners' certification of no tobacco-related violations. Beginning the following year the fee would be collected as part of the annual Business Tax Certificate renewal process for each business. New businesses would pay the fee with their initial Business Tax Certificate application fee. While the business community has not been supportive of a fee, the \$30 proposed fee included within this report is much lower than the earlier recommendation of \$250 and is a compromise solution in light of the City's budget constraints.

As just described, the recommendation for addressing this ordinance as proposed within this report differs from the recommendation developed by consensus of the stakeholders group, both in terms of level of enforcement and funding, due to the budget issues facing the City. Should the ordinance be implemented with the lower level of enforcement as recommended herein, revisiting this issue and the stakeholders' vision for a higher level of enforcement in the future would be recommended.

2. Determine the number of potential permittees

The committee asked for an improved estimate of retailers that would be required to obtain a police permit to operate as a tobacco retailer. The City Attorney's Office gathered such information from the state Board of Equalization, determined the number to be approximately 1,350, and the list is available upon request.

3. Prepare a cost breakdown for employer costs

Businesses face a myriad of taxes and fees from federal, state, and local governments to operate their businesses. These costs can be divided into four general categories: (1) taxes; (2) health and safety inspection charges; (3) product specific fees; (4) and business operation fees. Such costs vary depending upon a variety of factors, including location of business and type of products sold. Also, some fees are one time costs while others are recurring costs. Among the common taxes and fees are:

- Taxes generally include: state and federal income taxes, sales taxes, excise taxes, workers compensation insurance costs, and employment costs (social security). Costs depend on income and type of item sold.
- Health and safety fees generally include: State and Local Agricultural and Health inspection/certificate fees, Fire Department inspection fees, and Building/Code compliance inspection fees.

- Product specific fees generally include: ABC licenses (including PCN and CUP fees), AB 71 [State Tobacco Retailer License], and Federal Alcohol and Tobacco Product fees. For example, AB 71 imposes a one time fee of \$100.
- Business operation fees generally include: City of San Diego Zoning Use Certificate, Business Tax certificates, DBA certificate fees, Signage Postage Fees, Alarm Permit fees, and etc.

It is acknowledged that imposing a fee for the permit has an impact on businesses. However, the amount proposed is minimal in comparison to that originally proposed and would provide the SDPD a tool to conduct enforcement as resources permit.

4. Draft a grandfather clause and determine a grace period

The Committee asked that a “grandfather clause” and a “grace period” be included in the proposed ordinance. As a result, the City Attorney’s Office added both items to the proposed ordinance. The “grandfather clause” is added as section 33.4413. Under the “grandfather clause” section, convictions which occurred before the effective date of the proposed ordinance would not be used to preclude a person from obtaining a police permit to operate as a tobacco retailer. The “grace period” was added as Section 3 of the proposed ordinance. Under the “grace period” the ordinance would not go into effect until 180 days from its passage. During this time period, SDPD would make preparations to assume its duties under the ordinance. Additionally, efforts to educate potential permittees as to the requirements under the ordinance would be undertaken.

5. American Lung Association Survey Data

The City Attorney’s Office, at the request of the Committee, obtained the requested American Lung Association Data. Such information is attached to the companion City Attorney Report.

6. Develop a process that is complaint driven to focus on the problems rather than all businesses

As described above, the enforcement activities conducted by the Vice unit would be based, in part, upon complaints. These procedures attempt to address the concerns of the stakeholders as well as enable the Police Department to conduct enforcement within the budget constraints faced by the City.

7. Provide information on Assembly Bill 3092 and other relevant legislation

The City Attorney’s Office, at the request of the Committee, obtained the requested information on AB 3092 and other relevant legislation. Such information is attached to the companion City Attorney Report.

8. Indicate why other, existing laws are insufficient –

The health advocates assert, and retailers disagree, that state fines and sanctions are too low to be a deterrent. The existing state laws governing tobacco sales include Penal Code Section 308(a), AB 71, and the STAKE Act. Penal Code Section 308(a) generally makes it illegal to sell tobacco products to minors. AB 71 generally requires tobacco retailers to obtain a state license. The STAKE Act requires retailers to post various notices regarding the sale of tobacco products to minors, requires the Department of Health Services to enforce the Act, and provides for civil penalties for violations of the Act.

Fines for violating Penal Code Section 308(a) (selling tobacco products to minors) range from \$250 to \$1,000 based upon the number of violations. Administrative sanctions by the State Board of Equalization for selling tobacco products to minors in violation of AB 71 license requirements, when there is a statewide illegal sales rate of 13% or greater, are as follows: first conviction is issued a warning; second conviction within 12 months is a fine of \$500; third conviction within 12 months is a fine of \$1,000; fourth through seventh convictions within 12 months result in suspension of license for period of up to 90 days; and for the eighth conviction within 12 months, the license may be suspended. Civil penalties for violating the STAKE Act range from \$200 to \$6,000, based upon the number of violations, but can be only enforced by the Food and Drug Branch of the California Department of Health Services. Proponents stated that there are only five Food and Drug Branch officers assigned to 20,000 retail outlets in Southern California. Finally, in support of their position, proponents pointed to the American Lung Association Youth Tobacco Survey which showed that 43.9% of retailers which were surveyed in the City of San Diego sold tobacco products to minors. Proponents of the ordinance provided a copy of the Tobacco-Free Communities Model Licensing Ordinance (Attachment 5), which provides for universal licensure and was used to help draft the City's proposed ordinance.

9. Determine and indicate whether there are other ways to fund tobacco enforcement:

During the stakeholder process, a number of potential funding options were identified during a brainstorming session (described in attachment 2). As indicated above, the only funding idea that the stakeholders agreed upon was reallocation of the MSA funds, which are currently allocated to various General Fund programs and services. This is not being recommended by the City Manager given the budget constraints. There was no consensus among the stakeholders about the other funding ideas and some would have had an impact to the General Fund, thus they are not recommended either.

On an ongoing basis, SDPD works to obtain grants to fund department needs. SDPD will continue to seek funding from foundation, private and federal grant sources and Philip Morris endowments that may be available to assist with the enforcement effort as necessary. Since the grant sources are not guaranteed, a minimal cost way of implementing the ordinance has been developed and it is recommended that a \$30 permit fee be implemented to fund the associated costs.

10. Research the County's role in prohibiting tobacco sales and enforcing existing laws

The County of San Diego primarily combats tobacco use, including underage use and sales, through its Department of Health and Human Services Agency (HHSA), Tobacco Control Resource Program (TCRP). TCRP receives funding from Proposition 99 funds and Tobacco Settlement funds. The TCRP has several programs to reduce tobacco use. They include: tobacco cessation programs, collaborating with other public health entities to educate about the perils of smoking, and tobacco control law enforcement activities. In the area of tobacco control law enforcement TCRP monitors smoke-free worksite laws and public smoke-free laws, provides a complaint hot-line to report smoke-free area violations, and has a TCRP Enforcement Officer. In addition, TCRP also provides funds to local agencies to conduct tobacco control law enforcement. TCRP is on the County's website at www.sdcounty.ca.gov/HHSA.

The County of San Diego had also entered into an MOU with the Sheriff's Department to obtain dedicated staffing to enforce laws related to a smoke-free work place and Penal Code section 308 (sales of tobacco products to minors). However, because of a lack of funding, resources were not able to be committed to the MOU for enforcement activities.

11. Provide an accounting of the Tobacco Settlement Funds the City receives:

In February 1999, the City Council approved via resolution R-291262 Mayor Golding's "Smart and Healthy San Diego Plan", outlined in a memo dated February 2, 1999, for use of tobacco settlement funds resulting from the national tobacco litigation settlement. The City of San Diego's portion of the settlement funds totals \$312 million over 25 years. While the national Master Settlement Agreement placed no restrictions on how the funds could be used, the funding plan approved by the City Council designated spending priorities consistent with City responsibilities and the original reasons the City intervened in the lawsuit. Further, the attorney representing the original plaintiff stated that he believed the "Smart and Healthy San Diego Plan" was consistent with the original intent of the litigation, which was to penalize tobacco companies for any profits they may have wrongly earned as a result of dishonest business practices, specifically, attempts to mislead the public about the harmful health effects of smoking.

Attachment 3 is a spreadsheet outlining the way the Tobacco Settlement Funding has been allocated. The attachment reflects the funding plan as approved by the City Council in February 1999. The spreadsheet reflects the original proposal in the top section, with the actual allocation, as approved each fiscal year by the City Council, in the bottom section. Attachment 4 includes a description of each of the programs receiving tobacco settlement funding.

12. Address equity issues with regard to charging small stores and large stores same permit fee

This issue is addressed in the companion City Attorney Report.

13. Identify businesses who sold tobacco products to minors during the American Lung Association Survey.

The City Attorney's Office, at the request of the Committee, obtained information as to who was surveyed under the American Lung Association survey, including the results of how each surveyed business fared. Such information is attached to the companion City Attorney Report.

Summary

Several stakeholder meetings took place between SDPD, the City Attorney's office, members of the retail industry and health advocates as directed at the June 9, 2004 PS&NS Committee meeting. The City sought ways to strike a balance between the needs of retailers and the health and safety of the communities being provided Police services, while taking into account the budget constraints currently faced by the City. It is recommended that the proposed ordinance be adopted to amend the San Diego Municipal Code to require a police permit to operate as a tobacco retailer in the City of San Diego, administer the permit through the existing Business Tax Certificate process, direct the San Diego Police Department (SDPD) to enforce it as situations warrant and time and resources permit, and impose a \$30 fee upon tobacco retailers to fund the associated permit administration and administrative hearing costs.

ALTERNATIVES:

1. Impose a higher fee upon retailers to provide additional funding for SDPD enforcement efforts.
2. Postpone approval of the ordinance until grant funding can be obtained.
3. Do not approve the ordinance at this time.

Respectfully submitted,

Libby Coalson
Special Projects Manager

Approved: Lisa Irvine
Deputy City Manager

Irvine/LKC

Attachments: 1. List of stakeholders
2. Summary of Stakeholders Process
3. Tobacco Settlement Funding
4. Tobacco Settlement Program Description
5. Model Licensing Ordinance